



**IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.**

**Dated: April 09, 2014.**

A handwritten signature in black ink that reads "Tony M. Davis".

**TONY M. DAVIS  
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**IN RE:**

**FIRED UP, INC.**

**DEBTOR<sup>1</sup>**

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**CASE NO. 14-10447-tmd  
(Chapter 11)**

**ORDER AUTHORIZING MAINTENANCE OF CERTAIN PREPETITION BANK  
ACCOUNTS AND CASH MANAGEMENT SYSTEM**

CAME TO BE HEARD on April 1, 2014, the *Debtor's Emergency Motion to Authorize Maintenance of Certain Pre-Petition Bank Accounts and Cash Management System* ("Motion") (Dkt. #10) filed by the above-captioned case. The Court finds that good cause exists for granting the relief requested in the Motion and granting the Motion is in the best interest of the Debtor's estate

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<sup>1</sup> Until February 26, 2014, Debtor's business was being operated partially by the Debtor and partially by its two wholly owned subsidiaries, Kona Restaurant Group, Inc. and Carino's Italian Kitchen, Inc.. Those entities were merged into the Debtor on that date.

and their creditors. The Court further finds that the Debtor will suffer immediate and irreparable harm if the Court denies the relief sought in the Motion. The Court further finds that adequate notice of this Motion has been given and no other notice needs to be given. Therefore, it is

**ORDERED** that the Motion is **GRANTED** upon the terms and conditions set forth below. It is further

**ORDERED** that the Debtor is authorized to continue to use its Cash Management System as described in the Motion and modified herein. It is further

**ORDERED** that Debtor is authorized to continue to use the prepetition Master Depository, store depository, and “escrow accounts” listed on Exhibits A and B attached hereto. It is further

**ORDERED** that Debtor is also authorized to continue to use the pre-petition Payroll Account at Wells Fargo, account ending in 6637, up through and including April 2, 2014 and Wells Fargo is authorized to honor any payroll checks issued by the Debtor which are presented on or before April 2, 2014. Wells Fargo Bank, N.A. is authorized to close such account effective as of the close of business on April 2, 2014. It is further

**ORDERED** that the prepetition “escrow accounts” listed on Exhibit B and held in the Debtor’s name but created for the use of the administrator/providers of its self-insured medical and other insurance policies may continue to be used and funded for use by these administrator/providers and the Banks in which these accounts are located are authorized to honor any checks submitted against these accounts. It is further

**ORDERED** that the Debtor’s Banks are directed not to honor any checks or other withdrawals drawn on the Debtor’s bank accounts for obligations prior to the Petition Date except as set forth above or unless subsequently authorized otherwise by an Order of this Court. It is further

**ORDERED** that the Debtor is hereby authorized and empowered to continue to use their existing check stock until such stock is exhausted; but the Debtor shall clearly imprint on each

check the case name and number and “Debtor in Possession.” With respect to pre-printed checks, any new check stock ordered by the Debtor shall contain the “Debtor in Possession” label and case number; *provided further*, that with respect to checks that the Debtor prints in-house, the Debtor shall begin printing those checks with a “Debtor in Possession” designation and case number within five (5) business days of the date this Order is entered; it is further

**ORDERED** that nothing contained herein shall prevent the Debtor from opening or closing such bank accounts as it may deem necessary and appropriate. It is further

**ORDERED** that the Debtor shall close all pre-petition accounts, other than the Accounts set forth herein; it is further

**ORDERED** that the Debtor will provide to the Office of the United States Trustee the location and account number of any and all Debtor-in-Possession accounts opened by the Debtor initially or during the pendency of the Case; it is further

**ORDERED** that the Debtor will provide the United States Trustee with sufficient evidence to show that all accounts have been properly styled as Debtor-in-Possession accounts; it is further

**ORDERED** the Debtor, within seven (7) days from entry of this Order, shall cause a copy of this Order to be served on Wells Fargo Bank, N.A., Capital One Bank and any other bank at which a bank account is maintained and to counsel to any creditors’ committee appointed in the Debtor’s chapter 11 case. It is further

**ORDERED** that at no time shall the Debtor maintain balances with any Bank in excess of the federally-insured limit, unless the Bank is or agrees to become an authorized depository with the United States Trustee, Region 7, Southern and Western Districts of Texas; it is further

**ORDERED** that all institutions maintaining an account which constitute authorized depositories shall comply with the collateralization and reporting requirements of the United States Trustee for such authorized depository; it is further

**ORDERED** that the Debtor, on or before April 25, 2014, shall provide to the United States Trustee a reconciliation for all accounts closed as of petition date, including copies of bank statements and lists of outstanding checks with dates, payees and amounts, if any. In addition, if other accounts are closed post petition, Debtor shall provide the closing statement of those accounts; it is further

**ORDERED** that the Debtor shall transmit a copy of the monthly bank statement for its bank accounts at Wells Fargo Bank and Prosperity Bank (and any other operating account, but not a depository account that gets swept into an operating account) along with its monthly operating reports provided to the United States Trustee; it is further

**ORDERED**, that each of the Debtor's Banks are authorized to debit the Debtor's accounts in the ordinary course of business without the need for further order of this Court for: (i) all checks drawn on the Debtor's accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Commencement Date; (ii) all checks or other items deposited in one of Debtor's accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Commencement Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System; and it is further

**ORDERED** that any of the Debtor's Banks may rely on the representations of the Debtor with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein; it is further

**ORDERED** that (i) that those certain existing deposit agreements between the Debtor and its existing depository and disbursement banks (collectively, the "Banks") shall continue to govern the post petition cash management relationship between the Debtors and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, (ii) the Debtor and the Banks may, without further Order of this Court, agree to and implement changes to the cash management systems and procedures in the ordinary course of business, including, without limitation, the opening and closing of bank accounts. It is further

**ORDERED** that pending further Court order or agreement of the parties with respect to the Wells One Commercial Credit Card Agreement, Wells Fargo is authorized to make advances from time to time on behalf of the Debtor with a maximum exposure to the Debtor of \$35,000.00. As security for all indebtedness owed by the Debtor to Wells Fargo in respect of the Wells One Commercial Credit Card Agreement, the Debtor granted to Wells Fargo a security interest in the CARINO'S ITALIAN KITCHEN, INC. Collateral Accounts (XXXXXX72311 and XXXXX85378), pursuant to which the Debtor is required to maintain a collective minimum deposit balance of \$35,000.00 in collected funds. (Collectively, the Debtor's obligations in connection with the Wells One Commercial Credit Card Agreement and the security agreement

governing the CARINO'S ITALIAN KITCHEN, INC. Collateral Account are the “Wells Fargo Obligations”). It is further

ORDERED that pending further Court Order or agreement of the parties, the Debtor shall continue to maintain at all times a collective minimum of \$35,000 in the CARINO'S ITALIAN KITCHEN, INC. Collateral Accounts, inasmuch as Wells Fargo has and shall continue to have a valid and perfected, non-avoidable first-priority lien on the funds in the CARINO'S ITALIAN KITCHEN, INC. Collateral Account to secure the Wells Fargo Obligations. Such lien shall not be primed by any lien granted to any post-petition lender or other person. The P Card program will be terminated within 60 days of the date of this Order, and Wells Fargo shall release the funds in the deposit balance in the Collateral Accounts (XXXXXX72311 and XXXXX85378) sixty days thereafter. It is further

**ORDERED** that Wells Fargo shall continue to have a valid and perfected, non-avoidable first-priority lien on all of the funds in Account Number \*\*\*\*\* 3510 (the “CARINO'S ITALIAN KITCHEN, INC. Letter of Credit Collateral Account”), which constitute Cash Collateral of Wells Fargo. Wells Fargo is hereby granted a valid, perfected lien on all the funds in the “CARINO'S ITALIAN KITCHEN, INC. Letter of Credit Collateral Account to secure and otherwise discharge the Wells Fargo Obligations including, but not limited to any indebtedness arising from or related to letters of credit issued by Wells Fargo for the benefit of Carino’s Italian Kitchen, Inc., Carino’s Italian Restaurant, Inc., and/or Fired Up, Inc. It is further

**ORDERED** that nothing in this Order shall preclude the Debtor or any other party in interest from seeking modification of this Order upon motion to this Court.

All relief not expressly granted in this order is denied.

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APPROVED AS TO FORM:

/s/Stephen W. Sather

Stephen W. Sather  
Attorney for Debtor

/s/Deborah A. Bynum

Deborah A. Bynum  
Trial Attorney, U.S. Trustee's Office

/s/James Ruiz

James Ruiz  
Attorney for Wells Fargo Bank, N.A.

Prepared and submitted by:

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EXHIBIT A

ACCOUNT #	BANK NAME	ACCOUNT NAME	Purpose	LOC #	LOCATION	Notes:
4121631139	Wells Fargo	Carino's Italian Kitchen, Inc. - Master Account	Sweep/Funding Account	Corp	Austin	WF Master Account funds or sweeps corp level ZBA accounts
4121696637	Wells Fargo	Carino's Italian Kitchen, Inc. - Payroll Account	Payroll/ ZBA	Corp	Austin	Funded by Master Account
4121696645	Wells Fargo	Carino's Italian Kitchen, Inc. - A/P Account	Check payments to vendors/ ZBA	Corp	Austin	Funded by Master Account
4121854293	Wells Fargo	Carino's Italian Kitchen, Inc. - ACH Account	ACH Payments to vendors/ ZBA	Corp	Austin	Funded by Master Account
4121854301	Wells Fargo	Carino's Italian Kitchen, Inc. - Fintech Account	ACH Payments to Fintech for Alcohol purchases/ ZBA	Corp	Austin	Funded by Master Account
4945098150	Wells Fargo	Carino's Italian Kitchen, Inc. - Depository Account	Depository Sweep /ZBA	Corp	Austin	WF Store Depositories sweep into this account daily. Balance is swept to Master daily.
4945176063	Wells Fargo	Carino's Italian Kitchen, Inc.- Lubbock #21	Store Depository ZBA	21	Lubbock	
4126129931	Wells Fargo	Carino's Italian Kitchen, Inc.- N. Little Rock #29	Store Depository ZBA	29	North Little Rock	
4945175982	Wells Fargo	Carino's Italian Kitchen, Inc.- Katy #30	Store Depository ZBA	30	Katy	
4945176337	Wells Fargo	Carino's Italian Kitchen, Inc. - Waco #31	Store Depository ZBA	31	Waco	
4945176220	Wells Fargo	Carino's Italian Kitchen, Inc.- Round Rock #32	Store Depository ZBA	32	Round Rock	
4945176139	Wells Fargo	Carino's Italian Kitchen, Inc. - New Braunfels #33	Store Depository ZBA	33	New Braunfels	
4945176006	Wells Fargo	Carino's Italian Kitchen, Inc. - Lake Jackson #34	Store Depository ZBA	34	Lake Jackson	
4945175826	Wells Fargo	Carino's Italian Kitchen, Inc. - College Station #35	Store Depository ZBA	35	College Station	
4945176022	Wells Fargo	Carino's Italian Kitchen, Inc.- Laredo #36	Store Depository ZBA	36	Laredo	
4945176030	Wells Fargo	Carino's Italian Kitchen, Inc.- Longmont 37	Store Depository ZBA	37	Longmont	
4945175792	Wells Fargo	Carino's Italian Kitchen, Inc. - Brownsville #38	Store Depository ZBA	38	Brownsville	
4945176311	Wells Fargo	Carino's Italian Kitchen, Inc. - Victoria #40	Store Depository ZBA	40	Victoria	
4945175842	Wells Fargo	Carino's Italian Kitchen, Inc.- Corpus Christi #41	Store Depository ZBA	41	Corpus Christi	
4945175768	Wells Fargo	Carino's Italian Kitchen, Inc.- Boise #43	Store Depository ZBA	43	Boise	
4945175727	Wells Fargo	Carino's Italian Kitchen, Inc.- Ammon #45	Store Depository ZBA	45	Ammon	
4945175735	Wells Fargo	Carino's Italian Kitchen, Inc. - SA Bandera #48	Store Depository ZBA	48	SA Bandera	
4945176295	Wells Fargo	Carino's Italian Kitchen, Inc.- Twin Falls #49	Store Depository ZBA	49	Twin Falls	
4945175990	Wells Fargo	Carino's Italian Kitchen, Inc.- Rockwall #52	Store Depository ZBA	52	Rockwall	



ACCOUNT #	BANK NAME	ACCOUNT NAME	Purpose	LOC #	LOCATION	Notes:
4945175859	Wells Fargo	Carino's Italian Kitchen, Inc.- Denton #53	Store Depository ZBA	53	Denton	
4945175891	Wells Fargo	Carino's Italian Kitchen, Inc. - Grand Prairie #54	Store Depository ZBA	54	Grand Prairie	
4945175784	Wells Fargo	Carino's Italian Kitchen, Inc. - Brodie #55	Store Depository ZBA	55	Brodie	
4126129949	Wells Fargo	Carino's Italian Kitchen, Inc.- Rogers #56	Store Depository ZBA	56	Rogers	
4945176055	Wells Fargo	Carino's Italian Kitchen, Inc.- Loveland #57	Store Depository ZBA	57	Loveland	
4945176352	Wells Fargo	Carino's Italian Kitchen, Inc.- Waxahachie #60	Store Depository ZBA	60	Waxahachie	
4945175966	Wells Fargo	Carino's Italian Kitchen, Inc.- Parker #61	Store Depository ZBA	61	Parker	
4945175800	Wells Fargo	Carino's Italian Kitchen, Inc.- Cedar Park #64	Store Depository ZBA	64	Cedar Park	
4945176253	Wells Fargo	Carino's Italian Kitchen, Inc. - SA 410 #65	Store Depository ZBA	65	SA410	
4945175917	Wells Fargo	Carino's Italian Kitchen, Inc. - Houston 290 #69	Store Depository ZBA	69	Houston 290	
4945176345	Wells Fargo	Carino's Italian Kitchen, Inc. - Wallisville #71	Store Depository ZBA	71	Wallisville	
4945176105	Wells Fargo	Carino's Italian Kitchen, Inc.- Meridian #73	Store Depository ZBA	73	Meridian	
4945176154	Wells Fargo	Carino's Italian Kitchen, Inc. - Parmer #75	Store Depository ZBA	75	Parmer	
4945176162	Wells Fargo	Carino's Italian Kitchen, Inc.- Pearland #78	Store Depository ZBA	78	Pearland	
4945176170	Wells Fargo	Carino's Italian Kitchen, Inc. - Pharr #83	Store Depository ZBA	83	Pharr	
4945175834	Wells Fargo	Carino's Italian Kitchen, Inc.- Colorado Springs #88	Store Depository ZBA	88	Colorado Springs	
4945175743	Wells Fargo	Carino's Italian Kitchen, Inc.- Baytown #89	Store Depository ZBA	89	Baytown	
4945176261	Wells Fargo	Carino's Italian Kitchen, Inc.- San Marcos #91	Store Depository ZBA	91	San Marcos	
4944970532	Wells Fargo	Carino's Italian Kitchen, Inc.- San Marcos #91	Store Depository ZBA	91	San Marcos- Bobcat Bux	This is for the Texas State College Meal Plan card deposits
4945176188	Wells Fargo	Carino's Italian Kitchen, Inc. - San Angelo #94	Store Depository ZBA	94	San Angelo	
4945176121	Wells Fargo	Carino's Italian Kitchen, Inc.- Midland #100	Store Depository ZBA	100	Midland	
4945175719	Wells Fargo	Carino's Italian Kitchen, Inc. - Amarillo #101	Store Depository ZBA	101	Amarillo	
4945176238	Wells Fargo	Carino's Italian Kitchen, Inc. - SA Military #103	Store Depository ZBA	103	SA Military	
4945175818	Wells Fargo	Carino's Italian Kitchen, Inc. - Odessa #105	Store Depository ZBA	105	Odessa	
4126129964	Wells Fargo	Carinos Italian Kitchen, Inc. - Joplin #107	Store Depository ZBA	107	Joplin	
4121738017	Wells Fargo	Carino's Italian Kitchen, Inc.- Kansas City #108	Store Depository ZBA	108	Kansas City	

ACCOUNT #	BANK NAME	ACCOUNT NAME	Purpose	LOC #	LOCATION	Notes:
4945175941	Wells Fargo	Carino's Italian Kitchen, Inc.- Hurst #111	Store Depository ZBA	111	Hurst	
4945176279	Wells Fargo	Carino's Italian Kitchen, Inc. - Slaughter #112	Store Depository ZBA	112	Slaughter	
8606199999	Capital One	Carino's Italian Kitchen, Inc.- Depository	<b>Depository Sweep Account</b>	Corp	Austin	Capital One Store Depositories sweep into this account daily. Balance is transferred to WF Master daily.
8606100082	Capital One	Carino's Italian Kitchen, Inc.- Alexandria #82	Store Depository ZBA	082	Alexandria	
2513705908	BBVA Compass Bank	Carino's Italian Kitchen, Inc	Combined Group Insurance Services, Inc. Required Escrow Account	Corp	Austin	Maintain constant balance of 20,000. Texas non-subscriber occupational/accidental policy for employee injury claims
38208181	CitiBank Delaware	Carino's Italian Kitchen, Inc.	Aetna Self Funded Medical Insurance Required Escrow Account	Corp	Austin	Maintin constant balance of 85,000. Prior year self funded medical insurance program
385015862628	Bank of America	Carino's Italian Kitchen, Inc.	United Healthcare Self Funded Medical Insurance Required Escrow Account	Corp	Austin	Maintain constant balance of 46,000. Current year self funded medical insurance program.
385015862615	Bank of America	Carino's Italian Kitchen, Inc.	United Healthcare Self Funded Flexible Spending Account Plan Required Escrow Account	Corp	Austin	Maintain constant balance of 5000. Current year self funded flexible spending account program
	Wells Fargo	Carino's Italian Kitchen, Inc.	Travelers Required Letter of Credit for Self Funded Worker's Comp Program - Non Texas States	Corp	Austin	Letter of Credit secure by 367,000 in cash
7348585378, 7140972311	Wells Fargo	Carino's Italian Kitchen, Inc.	Security for Wells Fargo "P Card" Company Mastercard Program. Eliminating Program as of March 26, 2014	Corp	Austin	Total security is 35,000. xxxx378 CD has balance of 10, 000, xxxx311 CD has balance of 25,000.

**EXHIBIT B**

<b>BANK</b>	<b>AMOUNT</b>	<b>PURPOSE</b>	<b>ADMINISTRATOR</b>
BBVA Compass (xxxxxx908)	\$20,000	TPA Claims	Combined Group Insurance Service
CitiBank SAMP (xxxxxx181)	\$85,000	Medical from prior plan)	Aetna Self Funded
Wells Fargo	\$367,00 LOC (cash security)	Workmen's Comp	Traveler's
Bank of America (xxxx2628)	\$46,000	Self-Funded Medical Pgm	United Healthcare
Bank of America (xxxx2615)	\$5000	Self-Funded Flexible Spending Acct	United Health Care